IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1660 OF 2007

Mr. Sattarbhai @ Abdul Sattar Qureshi ..Applicant

Vs.

State of Maharashtra and ors. ..Respondents

Mr. R. Sathyanarayanan for applicant.
Mr. P.A. Pol, APP for State.
Mr. S.V. Marwadi for respondent nos.2 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : September 17, 2007.

P.C.:

1. Heard Mr. Sathyanarayanan the learned counsel for the applicant who is the complainant in C.C. No.2571/SS/2005 filed under Section 138 of the Negotiable Instruments Act, 1881. Mr. Marwadi the learned counsel appears for the respondent nos.2 to 4 who are accused in the said complaint. The learned APP appears for the State.

2. As per the complainant he is an approved contractor of MHADA for undertaking repairs to the old and dilapidated buildings in Mumbai and he does the business either in his individual capacity or in the name of his concern i.e. Bissanwalla & Co. Three buildings of MHADA were undertaken by him for repairs i.e. Building No.90/98, Byculla Station Road, Mumbai - 400 009, Building No. 30/32,MUR Road, Madanpura, Mumbai - 400 003 and Building No. 119/123, Underia Street, Two Tank, Mumbai - 400 008. As per him, accused nos.2 and 3 are the partners of the accused no.1-firm (present respondent nos.2 to 4) and accused nos.2 and 3 had promised him to procure the funds of Rs.6,00,000/- for the first building, Rs.5,00,000/- for the second building and Rs.4,00,000/- for the third building and all these sums were to be released from the MLAs and/or MLCs funds. It was further agreed, as per the complainant, that he was to pay 20% commission to accused nos.2 and 3 for releasing the said funds totalling Rs.15,00,000/- and accordingly he had paid Rs.3,00,000/- in cash to accused nos.2 and 3. In return, accused nos.2 and 3 got released an amount of Rs.3,00,000/- from MLC funds for the first building

and another sum of Rs.5,00,000/- for the second building from the MLC funds. The remaining amount of Rs.7,00,000/- could not be released and, therefore, he started chasing accused nos.2 and 3. As per him, finally in the month of December, they accepted their liability to refund the entire amount of Rs. 3,00,000/- after adjustment of minor expenses. Thus, the cheque bearing No.112229 dated 11/1/2005 for an amount of Rs.2,75,000/- was drawn in his favour by accused no.1-firm and the cheque was signed by accused nos.2 and 3 drawn on the Union Bank of India, Null Bazar Branch, Mumbai. The cheque was dishonoured and after he issued the legal notice the accused did not pay the sum of Rs.2,75,000/- and, therefore, he filed the complaint.

3. Though the learned Magistrate has rejected the complaint on multiple grounds, it would be sufficient to refer to the first two grounds. The trial court noted that the complainant could not establish his case of legally enforceable liability for the honour of the cheque. As per the trial court, the total

transaction was related to the development funds allocated to MLAs/MLCs and there could not be any legal transaction for payment of commission for releasing such funds from the Government treasury or from the Collectorate. Secondly, the transaction was in cash i.e. the complainant claimed to have paid an amount of Rs.3,00,000/- in cash for getting the funds released. Thirdly, in any case an amount of Rs.8,00,000/- was released in favour of the complainant and what was remaining was the balance of Rs.7,00,000/-. Even if the commission of 20% was accepted to be paid to accused nos.2 and 3, an amount of Rs.1,60,000/- would go to them and thus the cheque of Rs.2,75,000/- could not have been issued against the entire liability of Rs.3,00,000/- because what was remaining was only Rs.1,40,000/-. The last ground of filing of complaint by the accused on 21/5/2005 with the concerned police station regarding the loss of cheque need not be referred to as the accused have not stepped in the witness box and what was placed before the trial court was only a copy of the complaint lodged with the police station concerned.

3A. The three grounds relied upon by the learned Magistrate for dismissing the complaint do not call for any reconsideration at the hands of this court and hence there is no case made out to grant special leave to appeal under Section 378 (4) of Cr.P.C.

4. Hence, the special leave to appeal is hereby refused and the application is rejected.

5. Before I part with this application I must record my anguish in public concern. The complainant on oath deposed before the learned Metropolitan Magistrate that commission is demanded and paid for getting released the amounts from the development funds allocated to the MLAs and MLCs in the State of Maharashtra. The reply to the Advocate’s notice issued by the accused does not specifically deny that there was a transaction of commission being paid for releasing the MLAs/MLCs funds and though the complainant was cross-examined at length, there was nothing brought out to disbelieve this contention that

commission was demanded and he had paid some part of it. This is a matter of serious public concern and it would be for the appropriate authorities to take corrective steps in future, so as to ensure that the entire amount of the development allocated to each MLA/MLC is utilised for the development project and nothing is spent on commission or consultation fees etc.

6. I, therefore, direct the Director of Prosecution, State of Maharashtra to place a copy of this order before the Hon'ble the Chief Minister, the Hon'ble Speaker of the Legislative Assembly and the Hon'ble Chairman of the Legislative Council, State of Maharashtra at the earliest.

(B.H. Marlapalle,J.)